

Office-Supreme Court, U.S.  
F I L E D

DEC 16 1982

ALEXANDER L. STEVAS,  
CLERK

**82-1055**

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
\_\_\_\_\_  
Rainsford J. Winslow

Petitioner,

vs.

Morgan County Commissioners, Robert Bauer,  
John Lindell, Henry Kammerzell,

Respondents.

\_\_\_\_\_  
PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT  
STATE OF COLORADO

\_\_\_\_\_  
Presented by:

Rainsford J. Winslow, Pro Se  
Morgan Heights, P.O. Box 250  
Fort Morgan, Colorado 80701  
Phone: (303) 867-6201

QUESTIONS PRESENTED

1. Did the lower Court err in granting a Summary Judgment Motion relative to alleged improper NOTICE concerning amendments to Morgan County Subdivision Regulations and Zoning matters? Was the Morgan County NOTICE of August 1980 adequate?

2. Is Colorado Revised Statute 30-28-116 (1973) unconstitutional because it doesn't specify exactly what is required to give property owners full disclosure as to the implications relative to zoning matters that could materially change the value of real property? Does it give "due process rights" to Colorado citizens?

3. Did the Trial Court err in not granting motion to disqualify Morgan County Attorney E. Ord Wells, and did the Court of Appeals and the Colorado Supreme Court err in not addressing this issue?

Colorado Statute

While the Constitutionality of C.R.S. 30-28-116 (1973) was not actually raised as an issue in this case, it seems appropriate that this Honorable Supreme Court of the United States review it. It is believed that it is unconstitutional. By having a review of this Colorado Statute, which can concern zoning matters, it might well be that other states might have similar problems in giving property owners proper notice.

Possibly the Supreme Court of the United States could adopt a federal requirement regarding proper and adequate notice when U.S. private property is being zoned or rezoned from one designation to another.

Zoning changes alter property values drastically and to protect due process rights of property owners, all such owners

should be given the opportunity to know what could happen to their land with changes in zoning designations. A federal rule for all states could be highly significant in protecting property owner's real estate values.

Attorney General Notice

It is believed that the Colorado Attorney General was not given notice of the possible unconstitutionality of C.R.S. 30-28-116 (1973). However, as per 28 U.S.C. Section 2403(b), the Colorado Attorney General will be served three copies of this document.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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October Term, 1982

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Rainsford J. Winslow,

Petitioner,

vs.

Morgan County Commissioners, Robert Bauer,  
John Lindell, Henry Kammerzell,

Respondents.

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PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT  
STATE OF COLORADO

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Petitioner Rainsford J. Winslow, Pro  
Se, respectively prays that a Writ of Cer-  
tiorari be issued to review the Judgment  
and Opinion of the Colorado Court of Appeals  
dated July 29, 1982. The Colorado Supreme  
Court denied Certiorari on September 27, 1982.

OPINIONS BELOW

The Petition for Writ of Certiorari to the Court of Appeals was denied by the Colorado Supreme Court and is documented as Appendix A. The Opinions of the Colorado Court of Appeals are reproduced as Appendix B and C. The Opinion and Judgment of the Morgan County Colorado Trial Court are reproduced as Appendix D.

JURISDICTION

The Judgment of the Colorado Court of Appeals was entered July 29, 1982. A timely petition for Rehearing was denied on August 19, 1982. A copy of the order denying rehearing is reproduced as Appendix K hereto, and Petition for Certiorari was timely filed, and denied on September 27, 1982. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(2) and possibly 28 U.S.C. Section 1257(3); also 28 U.S.C. Section 2403(b).

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

1. United States Constitution:

Fifth Amendment (in relevant part):

"No person shall be . . .  
deprived of life, liberty,  
or property, without due  
process of law . . . "

2. Colorado Revised Statute  
30-28-116 (1973):

This has to do with amend-  
ing Colorado County regu-  
lations, which includes  
zoning matters, and is  
cited completely in  
Appendix E.

STATEMENT OF THE CASE

The facts of the case are as  
follows:

1. On or about August 13, 1980, the  
Morgan County Commissioners caused to be  
published an advertisement in two Morgan  
County newspapers of general circulation,  
namely the Fort Morgan Times and the Brush  
News Tribune. This advertisement had to

do with a hearing covering amendments to the Morgan County Zoning Resolution, a brand new set of Morgan County Subdivision Regulations, plus changing the zoning of most of Morgan County, not just a small portion of Morgan County. The actual advertisement follows in typewritten form, and then an actual reprint of the ad as it did appear in both newspapers.

#### NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held before the Board of County Commissioners, Morgan County, Colorado, to consider the following items:

Revision and amendments to the Zoning Resolution and the accompanying maps of Morgan County, Colorado.

Revision and amendments to the Subdivision regulations of Morgan County, Colorado

The hearing will be held as follows:

DATE: September 16, 1980

TIME: 9:30 A.M.

PLACE: District Court Room,  
Court House, Fort  
Morgan

Documents and maps pertaining to the above identified items are on file in the Zoning Administrator's Office, Courthouse, Fort Morgan, Colorado and are open for public examination. Opportunity at the time of the hearing will be given for presentation of evidence in support of or in opposition to such items.

DATED this 11th day of  
August, 1980.

BOARD OF COUNTY COMMISSIONERS  
MORGAN COUNTY, COLORADO

By Henry Kammerzell, Chairman

**NOTICE OF PUBLIC HEARING**

Notice is hereby given that a public hearing will be held before the Board of County Commissioners, Morgan County, Colorado, to consider the following items:

Revision and amendments to the Zoning Resolution and accompanying maps of Morgan County, Colorado.

Revision and amendments to the Subdivision regulations of Morgan County, Colorado.

The hearing will be held as follows:

DATE: September 16, 1980

TIME: 9:30 A.M.

PLACE: District Court Room, Court House, Fort Morgan.

Documents and maps pertaining to the above identified items are on file in the Zoning Administrator's Office, Courthouse, Fort Morgan, Colorado and are open for public examination. Opportunity at the time of the hearing will be given for presentation of evidence in support of or in opposition to such items.

DATED this 11th day of August, 1980.

BOARD OF COUNTY COMMISSIONERS  
MORGAN COUNTY, COLORADO

BY Henry Kammerzell  
Chairman

One Publication: August 13, 1980

2. The small advertisement above was printed one time only in both Morgan County newspapers.

3. Rainsford J. Winslow, Plaintiff in this case, who is a Morgan County land developer and subdivider, saw the advertisement and was angry because it certainly could have been overlooked by most people, and he was disturbed at what it proposed. He was active in the Morgan County Board of Realtors, and brought this matter to the attention of the Realtors.

4. Winslow wrote a number of letters to the editor of the Fort Morgan Times criticizing the Morgan County Commissioners for what they were proposing to do.

5. There was a hearing before the Morgan County Commissioners as specified in the advertisement, on September 16, 1980, and approximately 30 persons were present to protest the actions contemplated by the Morgan County Commissioners. Winslow himself spoke for about 35 minutes urging

the commissioners not to take action and cited portions of the U.S. Constitution and the Colorado Constitution, plus various portions of the Colorado Holly Case, which will be cited later in this Petition.

Winslow was concerned because he believed that these proposals would have decreased the value of his land as well as the land belonging to others. Several citizens also spoke on much the same line.

6. On December 1, 1980, Winslow filed a Pro Se lawsuit against Morgan County, and the only relief he sought was to have Morgan County follow the Supreme Court of Colorado Decision as defined by Holly Development Company, Inc. v. Board of County Commissioners of Arapahoe County. 342 P. 2d 1032. Significant portions of this case are attached as Appendix L. It is believed the Colorado Supreme Court made this Holly Case decision, because all persons are

entitled to due process rights when it comes to property. This is an annotated case following C.R.S. 30-28-116 (1973).

7. Respondent Morgan County filed a Motion For Summary Judgment on October 14, 1981. A hearing on this motion was held in the Morgan County District Court before the Honorable Judge Carl J. Absmeier on November 10, 1981, and the motion was granted.

8. Just before the granting of the Summary Judgment Motion, the Trial Court denied Winslow's motion to disqualify County Attorney E. Ord Wells. Winslow alleged Wells was in conflict of interest, was prejudicial toward the Winslows, and violated certain Colorado Canons as they pertain to the conduct of attorneys.

9. A motion for new trial was filed on November 13, 1981, and was denied by the Trial Court that day. December 1, 1981,

Winslow filed notice of appeal.

10. The Colorado Court of Appeals accepted this case on the accelerated docket because the record was minimal. The Trial Court forwarded the record to the Court of Appeals, and it did include the motion for disqualification of Attorney Wells, which had 15 pages of pleadings, 24 exhibits, totaling 54 pages.

11. On April 7, 1982, Morgan County filed a MOTION OF COUNTY TO STRIKE PLEADINGS AND ISSUES. A portion of this motion is Appendix F. On May 11, 1982, the Colorado Court of Appeals denied this motion. It kept alive the Wells disqualification issue. On July 29, 1982, the Court of Appeals affirmed the Judgment of the Trial Court. On August 2, 1982, Winslow filed a request for a rehearing regarding this Judgment. It was denied on August 19, 1982, and is shown as Appendix B.

12. On September 2, 1982, a Petition for Writ of Certiorari was filed with the Supreme Court of the State of Colorado, which was denied as Case No. 82 SC 310 on September 27, 1982, and is Appendix A.

13. The disqualification of Attorney Wells was not addressed by the Colorado Court of Appeals or the Supreme Court of Colorado. Neither Court made comments one way or the other about this issue.

#### REASONS FOR GRANTING REVIEW

14. The reason Winslow is persistent in pursuing the appeal of this NOTICE issue is because the Morgan County Commissioners inadvertently rezoned Winslow's Morgan Heights Subdivision property in 1975 incorrectly, and it cost Winslow and his wife Winifred approximately \$5,000 to correct this error that was made by the Morgan County Commissioners.

15. Winslow is a veteran of World War II, was wounded in action, received

the Purple Heart, plus the Bronze Star for Valor, believes in justice and the U.S. and Colorado Constitutions. He feels that Morgan County is not following the U.S. Constitution nor the Colorado Constitution in giving proper NOTICE--due process rights, to the public--persons who own real property in Morgan County who are affected by zoning matters.

16. In analyzing the insignificant NOTICE, it could be considered unconstitutional because of size--less than three inches square. Yet, literally thousands of land owners could have had their property change in value by multi-millions of dollars, and not have had any idea that this happened. In reviewing this tiny ad, this NOTICE, it is possible to see that it was merely a "lick and a promise" as to statutory compliance.

17. A zoning designation of property can change the value of said property or adjoining property up or down by as much as 75%, depending upon how the land might be zoned or rezoned. Anyone reading the advertisement in the two Morgan County newspapers, unless they were highly sophisticated, would not have had any idea what could have happened to their property's value by action of the Morgan County Commissioners.

18. For example, let's say Morgan County Farmer Able, as per the little ad in the Morgan County newspapers, is authorized to put in a new pig farm next door to an existing luxury residence owned by Citizen Baker. Citizen Baker didn't see the insignificant little Morgan County advertisement, didn't go to the hearing, and then all of a sudden Farmer Able is installing a pig farm next door to Citizen

Baker. The value of Citizen Baker's home now is probably 50% less with the pig farm operation, and he had no opportunity to protest, if he hadn't seen the little notice. It is argued that Citizen Baker didn't have his due process rights. It is further argued that even had Citizen Baker read the ad in the Fort Morgan Times carefully, there is no way he could have known that adjoining land was going to be changed to permit a pig farm next door to his luxury home.

Winslow Property Zoning Error

19. In 1974, Winslow had his Morgan Heights Second Addition zoned Multi-Family, which permitted condominiums, townhouses, and apartments. In mid-1975, the Morgan County Commissioners ran a small ad similar to the NOTICE at issue, announcing a hearing for rezoning. Not one single citizen

attended this hearing other than the zoning officials and the Morgan County Commissioners. Nobody saw the ad apparently. At least, Winslow did not see it.

20. Since there were no land owners present to object, one of the rezoned areas was Morgan Heights, which was changed from Multi-Family to Rural Residential. In Winslow's opinion, this dropped the value of his land by at least 50% because condominiums, townhouses, and apartments are not permitted in Rural Residential areas.

21. Because of the requirements of County Attorney E. Ord Wells, it cost Winslow approximately \$5,000 to correct this error. Had the Winslows sold the property and had not uncovered this error, they could have been subjected to a lawsuit, because they would have represented to a buyer that the property was Multi-Family, when in actuality it was Rural Residential.

This 1975 \$5,000 zoning error is not at issue in this case, and is cited merely for illustrative purposes.

The Holly Case

22. The Morgan County NOTICE, under no theory, followed the Holly Case, a portion of which is included as Appendix L.

23. The Morgan County NOTICE was absolutely ambiguous as to what the actual implications were. Only the most sophisticated property owner would have understood what was happening.

24. It is argued that the NOTICE was insignificant, ineffective, insufficient, and misleading, and would not have given anybody full knowledge as to what was being contemplated. In Holly, only 25 acres was involved. In Morgan County--approximately 790,400 acres, repeat 790,400 acres!

25. Here is a citation from the Holly Case regarding zoning:

Zoning--County Commissioners--  
Resolution--Amendment--Map--  
Statute . . . The legislative  
intent being that over-all  
plans or changes should be  
given such publicity as will  
reasonably inform the owners  
affected, and is governed by  
106-2-11 dealing with the  
adoption of a zoning plan.  
(C.R.S. 106-2-11 is a 1953  
statute, not in effect anymore.)

26. There was certainly nothing in  
this Morgan County advertisement that would  
WARN anybody about what was happening. Here  
is another citation from the Holly Case:

"When a statute requires a  
notice to be given to the public,  
such a notice should fairly be  
given the meaning it would  
reflect upon the mind of the  
ordinary layman, and not as  
it would be construed by one  
familiar with the technicali-  
ties solely applicable to the  
laws and rules of the zoning  
commission. Otherwise such  
a notice, instead of inform-  
ing, would actually mislead  
the public, including the  
persons immediately inter-  
ested. \* \* \* It is, at least

not too much to ask that any ambiguity in a notice to the public of so important a change, which is the only notice that the public has, should be resolved against the notice." (Emphasis added.)

27. It is argued that the Morgan County Commissioners did not analyze the Holly Case when they authorized this NOTICE published in August of 1980.

28. The Statute C.R.S. 30-28-116 (1973), does not spell out what must be done in so many words. It is very broad and by itself, does not use the Holly Case as a guide. The Holly Case is believed to be annotated following this statute to guide Colorado County Commissioners. It didn't guide the Morgan County Commissioners, and the NOTICE they did give didn't tell what was specifically proposed to happen. It is alleged that this NOTICE at issue is unconstitutional!

Other Reasons For Certiorari Review

29. Winslow feels that there are possibly other states in America that have this same problem, and if the United States Supreme Court were to establish a guide as to what must absolutely be required when subdivision regulations and zoning matters are being amended, it would benefit all property owners everywhere in the U.S.A., not just persons in Morgan County or the State of Colorado.

30. It would seem that at least First Class Mail notice should be given persons whose land is proposed to be affected. This would include adjoining land owners. There is no such requirement in C.R.S. 30-28-116 (1973). There certainly was no such notice given Morgan County property owners in August of 1980.

Disqualification Of County Attorney Issue

31. The motion for disqualification of County Attorney E. Ord Wells is voluminous--15 pages of pleadings, plus 24 exhibits comprising 54 pages. There are three areas that are covered in this disqualification motion, namely:

A. Conflict of Interest

Attorney Wells is managing partner of a corporation which has a financial interest in a piece of development property adjoining Morgan Heights, which is owned by Winslow and his wife Winifred.

B. Prejudicial Conduct

Attorney Wells, in the opinion of Winslow, has acted in a prejudicial manner to him regarding zoning/subdivision matters.

C. Colorado Canon Violations

Those Canons which are alleged to be in violation include Canon 5, EC 5-13; Canon 8 DR 8-101; Canon 8 EC 8-8; and Canon 9, DR 9-101. (These are all found in the Colorado Statutes, Volume 7-A.)

32. All of these matters are fully covered in the Motion To Disqualify Attorney Wells, which includes a Memorandum in Support of this Motion. It is part of the record and this Honorable Supreme Court of The United States can look it over should Certiorari be granted.

#### CONCLUSION

33. This small Morgan County case could have significance nationwide--an impact upon all property owners in America, because virtually all property in the United States is zoned in one way or another. By having a uniform law, it would take the guess work out of proper notification of property owners, and have a method of protecting the public in zoning matters.

34. It is hoped that this Court will also review the motion to disqualify Attorney Wells. If it reviews the Winslow Motion and Memorandum, it is believed this

Court will disqualify him.

35. Thus, this is the prayer of Winslow and this is why a Writ of Certiorari should be granted so as to review the Judgment of the Morgan County Trial Court, and the Opinions of the Colorado Court of Appeals.

Respectfully submitted,

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